IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA

Civil Revision No.341 of 2000.

Judgment reserved on:17.11.2006.

Date of decision: 29.12.2006

Uma Devi ….Petitioner

-Versus-

Faquir Chand and others ….Respondents

Coram:

The Hon'ble Mr.Justice Deepak Gupta, Judge.

Whether approved for reporting?

For the Petitioner: Mr.R.K.Gautam, Senior Advocate with Ms.Archana Dutt, Advocate.

For Respondents: Mr.G.C.Gupta, Senior Advocate with Mr.Mohinder Gautam, counsel for respondent No.1.

Deepak Gupta, J.

This Revision Petition is directed against the order of the District Judge, Mandi whereby he has accepted the appeal filed by the respondent herein and has set-aside the ex-parte judgment and decree passed against Faquir Chand.

Brief facts, necessary for disposal of the petition are that Civil Suit No.87 of 89 was instituted on 31.5.1989 by Smt.Uma Devi, plaintiff against Faquir Chand and 18 other persons. In this suit Faquir Chand was proceeded against ex-parte and other than defendant No.2 Kashmir Singh no other person contested the suit and the same was decreed ex-parte.

Thereafter, Faquir Chand filed an application under Order 9 Rule 13 read with Section 151 CPC and Section 5 of the Limitation Act for setting aside the ex-parte decree dated 19.3.1991. The application for setting aside the ex-parte proceedings was filed on 2.8.1996. According to the applicant Faquir Chand he as well as his brother had engaged Sh.R.S.Vema, Advocate Jogindernagar as counsel in the suit. He was informed by Sh.R.S.Verma that he would be called as and when required. He further states that he was posted at Solan and retired as Deputy Superintendent of Police on 31.8.1993. After his retirement his son was taken seriously ill and ultimately expired and therefore the applicant could not visit Jogindernagar till June, 1996. Then he met his counsel who tried to evade the applicant. He thereafter made inquiries and obtained the copy of the judgment and decree and found that the counsel had reported no instructions and as such he (Faquir Chand) had been proceeded against ex-parte and ex-parte decree had been obtained against him.

The application for setting aside ex-parte proceedings was filed on 2.8.1996. This application was contested by Uma Devi on various grounds. Evidence was recorded and the learned trial Court dismissed the application holding that there were no grounds to condone the delay of five years in moving the application and that even otherwise there was no sufficient cause shown for setting aside the ex-parte proceedings. Faquir Chand thereafter filed an appeal against this order in the Court of District Judge, Mandi who allowed the appeal by holding that the applicant Faquir Chand had engaged

counsel and had done everything in his power to effectively contest the suit. According to the learned lower Appellate Court it was the counsel who was at fault since he had not even filed the form regarding address of service as required under Order 6 Rule 14 CPC. It held that if counsel was permitted to withdraw, notice should have been given to Faquir Chand. This order is under challenge in the present petition.

I have heard Sh.R.K.Gautam, learned senior counsel for the petitioner and Sh.G.C.Gupta, learned senior counsel for the respondent.

Sh.G.C.Gupta, submits that while exercising Revisional jurisdiction this Court cannot interfere in the orders passed by the learned lower appellate Court. What is the scope of the jurisdiction of this Court under Section 115 CPC has been a subject matter of a catena of authorities.

In **the Managing Director (MIG) Hindustan Aeronautics Ltd. Balanagar, Hyderabad and another vs. Ajit Prasad Tarway, AIR 1973 SC 76,** the apex Court held as follows:

> "5.In our opinion the High Court had no jurisdiction to interfere with the roder of the first appellate court. It is not the conclusion of the High Court that the first appellate court had no jurisdiction to make the order that it made. The order of the first appellate court may be right or wrong; may be in accordance with law or may not be in accordance with law; but one thing is clear that it had jurisdiction to make that order. It is not the case that the first appellate court exercised its jurisdiction either illegally or with material irregularity….."

In **Manick Chandra Nandy vs. Debdas Nandy and others, AIR 1986 SC 446,** the apex Court held as follows:

> "The exercise of revisional jurisdiction is confined to questions of jurisdiction. While in a first appeal the Court is free to decide all questions of law and fact which arise in the case, in the exercise of its revisional jurisdiction the High Court is not entitled to re-examine or re-assess the evidence on record and substitute its own findings on facts for those of the subordinate Court."

In **Johri Singh vs. Sukh Pal Singh and others, (1989) 4 SCC 403,** the apex Court dealing with the revisional jurisdiction of the High Court held as follows:

> "23.Consequently, the high Court had jurisdiction to interfere with the order of the Senior Subordinate Judge only—(i) if the said Judge had no jurisdiction to make the order it has made, and (ii) had acted in breach of any provision of law or committed any error of procedure which was material and may have affected the ultimate decision. If neither of these conditions was met the High Court had no power to interfere, however profoundly it may have differed from the conclusion of the Senior Subordinate Judge on questions of fact or law…."

The latest judgment on the point of the apex Court is in **Kalpataru Vidya Samasthe ® and another vs. S.B.Gupta and another, (2005) 7 SCC 524,** wherein the apex Court while considering the scope of the revisional jurisdiction of the High Court under Section 115 CPC held as follows:

> "The High Court in its revisional jurisdiction under Section 115 cannot interfere with the findings of fact recorded by the courts below and reappreciate the evidence and interfere with the findings unless it is found that the findings recorded by the lower court were perverse or that there had been non-application of mind."

It is thus apparent that the scope of interference by this Court is very limited. The scope is limited to matter of jurisdiction or in case the findings of the learned lower appellate Court are on the face of it erroneous or so palpably wrong that no reasonable person could have reached such a finding. The High Court in exercise of its revisional jurisdiction cannot substitute its decision for the decision of the lower Court even if the High Court is of the opinion that the decision of the trial court is wrong or incorrect.

To be fair to Sh.R.K.Gautam, he has cited a number of judgments and submits that in the present case there has been gross delay in filing the application for setting aside the ex-parte proceedings which delay has not at all been explained by the applicant. This is a question of fact which cannot be gone into by this Court in exercise of revisional jurisdiction. The lower appellate court on a perusal of the evidence has come to the conclusion that Faquir Chand is not at fault since the counsel engaged by him withdrew from the case and he had no notice of hearing of the case. The Apex Court in **Tahil Ram Issardas Sadarangani and others vs. Ramachand Issardas**

Sadarangani and another, 1993 (Supp (3) supreme Court Cases 256, held that where the counsel for the petitioner withdrew from the case a duty is then cast upon the Court to issue notice to the petitioner unless there is material on record to show that the petitioner had notice of the date of hearing. Similarly in **Sushila Narahari and others vs. Nandakumar and another, (1996) 5 SCC 529,** the apex Court held that where the Advocate withdrew his Vakalatnama without notice to the client as a result of which the suit was decreed ex-parte the refusal to condone the delay was not justified. In **Malkiat Singh and another vs. Joginder Singh and others, (1998) 2 SCC 206,** the apex Court again held that where the appellant's counsel pleaded no instructions and thereafter ex-parte decree was passed then the same was liable to be set-aside.

In the case in hand though there has been great delay, but the lower appellate Court has exercised its jurisdiction in condoning the delay in view of the facts and circumstances mentioned in the order of the lower appellate Court. Keeping in view the fact that the counsel for the applicant Faquir Chand had withdrawn from the case and no notice of such withdrawal was given to Faquir Chand the decision calls for no interference. The order of the lower appellate Court cannot be said to be without jurisdiction or an order based on no evidence whatsoever.

Keeping in view the aforesaid facts and circumstances no interference is called for in the Revision Petition and the same is dismissed.

Keeping in view the fact that the suit was filed as far back as in the year 1989 the trial Court is directed to decide the case as early as possible and in any event not later than 30th of September, 2007. The parties through their counsel are directed to appear before the trial Court on 19th January, 2007 on which date Faquir Chand shall file his written statement if not already filed. It is made clear that no further opportunity shall be given to him to file the written statement.

December 29, 2006.
PV

(Deepak Gupta),
Judge